

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM WOMACK,

Plaintiff,

V.

L ADAMS, KEVIN BOVENKAMP, B BRAID, CHRIS BOWMAN, STEPHEN FLEENOR, JOHN/JANE DOES, ROY GONZALEZ, LIZA ROHRER, STEVEN SINCLAIR, SUNDBERG, THURSTON COUNTY, THOMAS VICARI, WASHINGTON DEPARTMENT OF CORRECTIONS.

Defendants.

CASE NO. 3:15-CV-05249-RBL-DWC

ORDER

Plaintiff William Womack, proceeding *pro se* and *in forma pauperis*, filed this civil rights complaint under 42 U.S.C. § 1983. Presently pending is Plaintiff's Objection to the Court's Report and Recommendation filed July 1, 2015 ("Objection"). Dkt. 12. Having reviewed Plaintiff's Objection and the balance of the record, the Court vacates the Report and Recommendation and orders Plaintiff to clarify his request.

BACKGROUND

Plaintiff initiated this lawsuit on April 20, 2015 when he filed a Motion to Proceed *In Forma Pauperis* (“IFP”). Dkt. 1. Plaintiff’s Motion to Proceed IFP was granted and, on June 11, 2015, Plaintiff was ordered to amend his Complaint or show cause why his Complaint should not be dismissed. Dkt. 9. In the Order, the Court noted there were only two claims which were proper in the Western District of Washington and the claims appeared to be barred by the statute of limitations. *Id.* at pp. 3-4. Plaintiff was notified if he failed to state viable claims against Defendants residing in or events occurring in the Western District, the Eastern District of Washington would be the proper venue as the remaining Defendants reside and the events occurred in the Eastern District. *Id.* at p. 11. The Court instructed Plaintiff to show cause why his Complaint should not be dismissed without prejudice as to his right to refile a complaint containing only claims arising in the Western District of Washington. *Id.*

On June 26, 2015, Plaintiff filed a Motion to Voluntarily Dismiss his case and requested the Court waive collection of the balance of his filing fee. Dkt. 10. The Court recommended Plaintiff’s Motion for Voluntary Dismissal be granted and the request to waive the collection of the filing fee be denied. Dkt. 11. Plaintiff’s Objection to the Report and Recommendation asks the Court to:

[v]oluntarily dismiss this action and either transfer or waive the filing fee to allow him to file in the Eastern District Court of Washington.

Dkt. 12. Plaintiff has not filed an amended complaint containing only claims arising in the Western District of Washington.

DISCUSSION AND INSTRUCTION

In his Objection, Plaintiff now requests the Court “voluntarily dismiss this action and either transfer or waive the filing fee[.]” Dkt. 12, p. 2. Plaintiff restates his intention is to file his case in the Eastern District of Washington. *Id.* Plaintiff did not request a transfer of his case in his Motion to Voluntarily Dismiss and has not previously made any indication of his intent to transfer his case. *See* Dkt. 10. But, since the language in his Objection is not clear whether Plaintiff seeks to dismiss or transfer this case, the Court vacates the July 1, 2015 Report and Recommendation to allow Plaintiff an opportunity to clarify his Motion to Voluntarily Dismiss his Complaint.

The Court orders as follows:

1. If Plaintiff is requesting the Court transfer his case to the Eastern District of Washington Plaintiff must:
 - a. File a motion to withdraw his Motion to Voluntarily Dismiss the Complaint;
 - b. File a motion to voluntarily dismiss without prejudice his claims against the two Western District Defendants [Thurston County and an unnamed employee of Shelton Correctional Center]; and
 - c. File a motion requesting the Court to transfer his case, including his filing fee, to the Eastern District of Washington.
2. In the alternative, if Plaintiff does not take the action in (1), the Court will recommend Plaintiff's Motion to Voluntarily Dismiss the Complaint be granted and will recommend Plaintiff's request to waive the filing fee be denied.

CONCLUSION

Based on the foregoing reasons, the July 1, 2015 Report and Recommendation is vacated.

3 Plaintiff must file motions described above on or before August 17, 2015. The Clerk is directed
4 to note this matter for August 21, 2015.

Dated this 17th day of July, 2015.

W. Christel

David W. Christel
United States Magistrate Judge